

HOUSE BILL No. 1250

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-3; IC 7.1-3; IC 7.1-5-6-3; IC 7.1-5-10-23.

Synopsis: Alcohol beverage matters. Defines "grocery store" for purposes of the alcohol and tobacco law. Allows the alcohol and tobacco commission (commission) to grant or transfer a beer dealer's permit for a beer dealer who held a permit before July 1, 2006, and does not qualify as a grocery store. Requires a person to obtain an employee's permit from the commission before the person may act as a sales clerk to ring up or otherwise record alcoholic beverage sales in drug stores or grocery stores. Makes it unlawful for a purchaser or anyone else who is not a clerk to ring up alcoholic beverage sales in a package liquor, grocery, or drug store or for the store proprietor to allow that kind of activity. Requires a beer, liquor, or wine dealer to sell alcoholic beverages in a designated area separated from the sale of nonalcoholic retail merchandise on the dealer's licensed premises. Prohibits a minor from entering a designated area without a parent or guardian who is at least 21 years of age. Requires an employee, as part of the employee's job responsibilities, to ensure that minors do not enter the designated area without a parent or guardian. Allows the commission to grant one beer dealer's permit and one liquor dealer's permit in an incorporated city, town, or unincorporated town for each 4,500 persons. (Current law allows the commission to grant one beer dealer's permit and one liquor dealer's permit for each 1,500 persons.) Allows the commission to renew or transfer a beer dealer's or liquor dealer's permit for a beer dealer or liquor dealer who held a permit before July 1, 2006, and does not qualify for a permit as a result of the quota requirement. Makes conforming changes.

Effective: July 1, 2006.

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January 10, 2006, read first time and referred to Committee on Public Policy and Veterans Affairs.



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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1250

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-1-3-18.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2006]: **Sec. 18.5. (a) "Grocery store" means**
4 **a store or a part of a store that:**

5 **(1) has the primary North American Industry Classification**
6 **System (NAICS) classification 445110 or 452910; and**

7 **(2) is primarily engaged in the retail sale of a general food**
8 **line, which may include:**

9 **(A) canned and frozen foods;**

10 **(B) dry goods, including tea, coffee, sugar, and flour;**

11 **(C) fresh fruits and vegetables; and**

12 **(D) fresh and prepared meats.**

13 **(b) The term does not include a store that has less than two**
14 **hundred fifty thousand dollars (\$250,000) in annual gross sales of**
15 **food, excluding the following:**

16 **(1) Candy, confectionaries, and chewing gum.**

17 **(2) Alcoholic beverages.**

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(3) Cocktail mixers.

(4) Soft drinks, sodas, and other similar beverages.

(5) Medicines, tonics, vitamins, and other dietary supplements.

(6) Water (except natural spring water), mineral water, carbonated water, and ice.

(7) Pet food.

(8) Food furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant.

(9) Meals served by a retail merchant off the merchant's premises.

(10) Food sold by a retail merchant who ordinarily bags, wraps, or packages the food for immediate consumption on or near the merchant's premises, including food sold on a "take out" or "to go" basis.

(11) Food sold through a vending machine.

(12) Tobacco products.

SECTION 2. IC 7.1-1-3-40.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 40.5. "Sales clerk" means a person who:

(1) rings up; or

(2) otherwise records;

an alcoholic beverage sale in the course of the person's employment in a dealer establishment.

SECTION 3. IC 7.1-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The holder of a beer dealer's permit shall be entitled to purchase beer for sale under the permit only from a permittee entitled to sell to a beer dealer under this title.

(b) A beer dealer shall be entitled to possess beer and sell it at retail to a customer in permissible containers only.

(c) A beer dealer may not sell beer by the drink nor for consumption on the licensed premises nor shall a beer dealer allow it to be consumed on the licensed premises.

(d) Except as provided in subsection (e), a beer dealer shall be entitled to sell beer to a customer **in a designated area separated from the area where nonalcoholic retail merchandise is sold**, and to deliver it in permissible containers to the customer on the licensed premises, or to the customer's residence or office. **A minor may not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. The designated area shall be**

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1 **monitored by an employee who, as part of the employee's job**
 2 **responsibilities, shall ensure that a minor does not enter the**
 3 **designated area without a parent or guardian who is at least**
 4 **twenty-one (21) years of age.** A beer dealer shall not be entitled to sell
 5 and deliver beer on the street or at the curb outside the licensed
 6 premises, nor shall a beer dealer be entitled to sell beer at a place other
 7 than the licensed premises. A beer dealer shall not be entitled to sell
 8 beer and deliver beer for carry-out, or for delivery to a customer's
 9 residence or office, in a quantity that exceeds eight hundred sixty-four
 10 (864) ounces in a single transaction. However, notwithstanding
 11 IC 7.1-5-10-11, a beer dealer who is licensed pursuant to IC 7.1-3-10-4
 12 shall be entitled to sell and deliver warm or cold beer for carry-out, or
 13 for delivery to a customer's residence, office, or a designated location
 14 in barrels or other commercial containers that do not exceed two
 15 thousand sixteen (2,016) ounces per container. This delivery may only
 16 be performed by the permit holder or an employee who holds an
 17 employee permit. The permit holder shall maintain a written record of
 18 each delivery for at least one (1) year that shows the customer's name,
 19 location of delivery, and quantity sold.

20 (e) Unless a beer dealer is a grocery store or drug store, a beer
 21 dealer may not sell or deliver alcoholic beverages or any other item
 22 through a window in the licensed premises to a patron who is outside
 23 the licensed premises. A beer dealer that is a grocery store or drug store
 24 may sell any item except alcoholic beverages through a window in the
 25 licensed premises to a patron who is outside the licensed premises.

26 SECTION 4. IC 7.1-3-10-7 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) The holder of a
 28 liquor dealer's permit shall be entitled to purchase liquor only from a
 29 permittee entitled to sell to a liquor dealer under this title.

30 (b) A liquor dealer shall be entitled to possess liquor and sell it at
 31 retail in its original package, **in a designated area separated from the**
 32 **area where nonalcoholic retail merchandise is sold,** to a customer
 33 only for consumption off the licensed premises. **A minor may not**
 34 **enter the designated area without a parent or guardian who is at**
 35 **least twenty-one (21) years of age. The designated area shall be**
 36 **monitored by an employee who, as part of the employee's job**
 37 **responsibilities, shall ensure that a minor does not enter the**
 38 **designated area without a parent or guardian who is at least**
 39 **twenty-one (21) years of age.**

40 (c) A liquor dealer may deliver liquor only in permissible containers
 41 to a customer's residence or office in a quantity that does not exceed
 42 twelve (12) quarts at any one (1) time. However, a liquor dealer who

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1 is licensed under IC 7.1-3-10-4 may deliver liquor in permissible
 2 containers to a customer's residence, office, or designated location.
 3 This delivery may only be performed by the permit holder or an
 4 employee who holds an employee permit. The permit holder shall
 5 maintain a written record of each delivery for at least one (1) year that
 6 shows the customer's name, location of delivery, and quantity sold.

7 (d) A liquor dealer may not sell or deliver alcoholic beverages or
 8 any other item through a window in the licensed premises to a patron
 9 who is outside the licensed premises. However, a liquor dealer that is
 10 a drug store may sell prescription drugs and health and beauty aids
 11 through a window in the licensed premises to a patron who is outside
 12 the licensed premises.

13 SECTION 5. IC 7.1-3-15-3 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The holder of a
 15 wine dealer's permit shall be entitled to purchase wine only from a
 16 permittee who is authorized to sell to a wine dealer under this title. A
 17 wine dealer shall be entitled to sell wine, **in a designated area**
 18 **separated from the area where nonalcoholic retail merchandise is**
 19 **sold**, for consumption off the licensed premises only and not by the
 20 drink. **A minor may not enter the designated area without a parent**
 21 **or guardian who is at least twenty-one (21) years of age. The**
 22 **designated area shall be monitored by an employee who, as part of**
 23 **the employee's job responsibilities, shall ensure that a minor does**
 24 **not enter the designated area without a parent or guardian who is**
 25 **at least twenty-one (21) years of age.**

26 (b) A wine dealer shall be entitled to sell wine in permissible
 27 containers in a quantity of not more than three (3) standard cases, as
 28 determined under the rules of the commission, in a single transaction.
 29 However, a wine dealer who is licensed under IC 7.1-3-10-4 may
 30 possess wine and sell it at retail in its original package to a customer
 31 only for consumption off the licensed premises.

32 (c) Unless a wine dealer is a grocery store or drug store, a wine
 33 dealer may not sell or deliver alcoholic beverages or any other item
 34 through a window in the licensed premises to a patron who is outside
 35 the licensed premises. A wine dealer that is a grocery store or drug
 36 store may sell any item except alcoholic beverages through a window
 37 in the licensed premises to a person who is outside the licensed
 38 premises.

39 (d) However, a wine dealer who is licensed under IC 7.1-3-10-4 may
 40 deliver wine only in permissible containers to a customer's residence,
 41 office, or designated location. This delivery may only be performed by
 42 the permit holder or an employee who holds an employee permit. The

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1 permit holder shall maintain a written record of each delivery for at
 2 least one (1) year that shows the customer's name, location of delivery,
 3 and quantity sold.

4 SECTION 6. IC 7.1-3-18-9 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) The commission
 6 may issue an employee's permit to a person who desires to act as:

7 (1) a sales clerk in a:

8 (A) drugstore;

9 (B) grocery store; or

10 (C) package liquor store; or as

11 (2) a bartender, waiter, waitress, or manager in a retail
 12 establishment. ~~excepting dining car and boat employees.~~

13 (b) A permit authorized by this section is conditioned upon the
 14 compliance by the holder with reasonable rules relating to the permit
 15 which the commission may prescribe from time to time.

16 (c) A permit issued under this section entitles its holder to work for
 17 any lawful employer. However, a person may work without an
 18 employee's permit for thirty (30) days from the date shown on a receipt
 19 for a cashier's check or money order payable to the commission for that
 20 person's employee's permit application.

21 (d) A person who, for a package liquor store or retail establishment,
 22 is:

23 (1) the sole proprietor;

24 (2) a partner, a general partner, or a limited partner in a
 25 partnership or limited partnership that owns the business
 26 establishment;

27 (3) a member of a limited liability company that owns the
 28 business establishment; or

29 (4) a stockholder in a corporation that owns the business
 30 establishment;

31 is not required to obtain an employee's permit in order to perform any
 32 of the acts listed in subsection (a).

33 (e) An applicant may declare on the application form that the
 34 applicant will use the employee's permit only to perform volunteer
 35 service that benefits a nonprofit organization. It is unlawful for an
 36 applicant who makes a declaration under this subsection to use an
 37 employee's permit for any purpose other than to perform volunteer
 38 service that benefits a nonprofit organization.

39 (f) An applicant is not entitled to an employee's permit if:

40 (1) the applicant is serving a sentence for a conviction for
 41 operating while intoxicated, including any term of probation or
 42 parole;

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(2) the applicant has more than one (1) but less than three (3) unrelated convictions for operating while intoxicated and less than two (2) years have elapsed after the applicant completed the applicant's sentence for a conviction for operating while intoxicated, including any term of probation or parole; or
 (3) the applicant has at least three (3) unrelated convictions for operating while intoxicated.

(g) The commission shall revoke a permit issued to an employee under this section if:

(1) the employee is convicted of a Class B misdemeanor for violating IC 7.1-5-10-15(a); or
 (2) the employee becomes ineligible for the issuance of an employee's permit under subsection (f).

The commission may revoke a permit issued to an employee under this section for any violation of this title or the rules adopted by the commission.

(h) This section does not apply to a dining car, boat, or airline employee.

SECTION 7. IC 7.1-3-22-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. ~~Dealers' Permits Limited.~~ (a) The commission may grant only one (1) beer dealer's permit and one (1) liquor dealer's permit in an incorporated city, town, or unincorporated town for each ~~one thousand five hundred (1,500)~~ **four thousand five hundred (4,500)** persons, or fraction thereof, within the incorporated city, town, or unincorporated town.

(b) Notwithstanding subsection (a), the commission may renew or transfer a beer dealer's or liquor dealer's permit for a beer dealer or liquor dealer who:

(1) held a permit before July 1, 2006; and
(2) does not qualify for a permit under the quota restrictions in subsection (a).

SECTION 8. IC 7.1-5-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) It is unlawful for a person to act as a ~~clerk in a package liquor store; or as a bartender; waiter; waitress; or manager for a retailer permittee~~ **in a position that is listed in IC 7.1-3-18-9(a)** unless that person has applied for and been issued ~~the appropriate~~ **an employee's** permit. ~~This section does not apply to dining car or boat employees or to a person described in IC 7.1-3-18-9(d).~~

(b) It is a defense to a charge under this section if, within thirty (30) days after being cited by the commission, the person who was cited produces evidence that the appropriate permit was issued by the

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commission on the date of the citation.

(c) It is a defense to a charge under this section for a new applicant for a permit if, within thirty (30) days after being cited by the commission, the new applicant who was cited produces a receipt for a cashier's check or money order showing that an application for the appropriate permit was applied for on the date of the citation.

(d) It is a defense to a charge under this section that the person:

(1) acted as a dining car, boat, or airline employee; or

(2) is a person described in IC 7.1-3-18-9(d).

SECTION 9. IC 7.1-5-10-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 23. (a) It is unlawful for a person who is the proprietor of a package liquor store, drug store, or grocery store to allow a purchaser of alcoholic beverages, or any other person who is not a sales clerk, to ring up or otherwise record an alcoholic beverage sale.**

(b) It is unlawful for a purchaser of alcoholic beverages, or any other person who is not a sales clerk, to ring up or otherwise record an alcoholic beverage sale in a:

(1) drug store;

(2) grocery store; or

(3) package liquor store.

SECTION 10. [EFFECTIVE JULY 1, 2006] **Notwithstanding IC 7.1-1-3-18.5, as added by this act, the commission may renew or transfer ownership of a beer dealer's permit for a beer dealer who:**

(1) held a permit before July 1, 2006; and

(2) does not qualify for a permit as a grocery store under the definition established by IC 7.1-1-3-18.5, as added by this act.

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